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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/031,578 02/27/98 BLUME

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QM12/0817

EXAMINER

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NORTHPORT NY 11768

WINGOOD, P

ART UNIT

PAPER NUMBER

3736

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DATE MAILED:

08/17/99

Please find below and/or attached an Office communication concerning this application or proceeding.

**Commissioner of Patents and Trademarks**

<b>Office Action Summary</b>	Application No. 09/1031578	Applicant(s) <i>BLUME</i>
	Examiner <i>WINWOOD</i>	Group Art Unit 3736

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

#### Status

- Responsive to communication(s) filed on \_\_\_\_\_.
- This action is FINAL.
- Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

#### Disposition of Claims

- Claim(s) 1-39 is/are pending in the application.
- Of the above claim(s) 26-39 is/are withdrawn from consideration.
- Claim(s) \_\_\_\_\_ is/are allowed.
- Claim(s) 1, 2, 16-18, 21-25 is/are rejected.
- Claim(s) 3-15, 17, 20 is/are objected to.
- Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

#### Application Papers

- See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.
- The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- The specification is objected to by the Examiner.
- The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119 (a)-(d)

- Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- All  Some\*  None of the CERTIFIED copies of the priority documents have been received.
- received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
- received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

#### Attachment(s)

- Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_  Interview Summary, PTO-413
- Notice of Reference(s) Cited, PTO-892  Notice of Informal Patent Application, PTO-152
- Notice of Draftsperson's Patent Drawing Review, PTO-948  Other \_\_\_\_\_

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## **DETAILED ACTION**

Examiner appreciates the election of Group 1; accordingly Group II is withdrawn from consideration and the restriction is made final.

### ***Claim Rejections - 35 U.S.C. § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2 and 21-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Goldstein et al.

Goldstein et al. discloses a method of collecting a specimen of 4-5 ml that is placed in the oral cavity and vigorously rinsed and deposited back into a storage tube for analysis. (Col. 4, Ins. 39-55; Claim 1). Col. 4, Ins. 1-7 indicate the significance of rinsing for a length of time such as 1-2 minutes. The step of pre-rinsing the mouth would be inherent to eliminate impurities.

### ***Claim Rejections - 35 U.S.C. § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are

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such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 16- 18, 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goldstein et al. in view of Charlton.

Goldstein discloses the limitations above but it does not disclose a transparent tube with a volume marker.

Charlton discloses a storage tube of glass or plastic (Col. 2) with a marker (Col. 3, lns. 10-15 at (26)) in an analogous art for the purpose of storing a known sample of saliva. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have modified the device of Goldstein et al. as shown by Charlton because the marking would enable determination of the sample deposited in the device. At (Col. 3, lns. 10-15) the text indicates that the volume is not limited to the 1ml marking as shown in fig. 4 thus the marking could be higher to indicate the amount of volume obtained - closer to the 5ml indicated in Goldstein et al. Refraining from oral activity before the gargling sample is an obvious step to maintain the integrity of the collected sample.

***Allowable Subject Matter***

5. Claims 3-15, and 19-20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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Any Further questions regarding this application can be addressed to Pamela Whanged  
who can be reached on (703)-308-2676.

Pamela Wingood

Patent Examiner

August 12, 1999

Samuel G. Gilbert  
Sam G. Gilbert  
Primary Examiner  
3736